

24 February 2023

Angel He
Adviser
ASX Compliance

Dear Angel

Response to Query Letter – 22 February 2023

We refer to the request from the ASX and note the requirements under listing rules 3.1A – 3.1.3, 15.7 and the ASX's policy position on the concept of "confidentiality" all of which we are mindful and adhere to as discussed when we sought approval to institute the trading halt that you referred to in the query letter.

Referring specifically to the section "Request for information" and dealing with each item in order.

1. Magnis is unaware of how the information in the Announcement appeared in the Article. Furthermore, the information the subject of the Announcement was not provided to the *Australian Financial Review* (or to any other news media organisation) by Magnis (or by any of its officers or executives) prior to the Announcement's release by Magnis on MAP.
 2. Magnis has robust arrangements in place which seek to ensure compliance with Listing Rule 15.7. In particular:
 - a. Magnis' Continuous Disclosure Policy specifically obliges Magnis to comply with Listing Rule 15.7 (this requirement is noted in section 11 of that Policy);
 - b. Magnis' officers and executives understand the requirements of (and the important policy basis underpinning) and have complied with Listing Rule 15.7; and
 - c. (in any event) Magnis' securities were in trading halt session state when the Article was published (meaning that there no risk of any uninformed trading in the market for Magnis' shares on ASX).
 3. Magnis is of the opinion that its current arrangements in relation to Listing Rule 15.7 are adequate, are operating effectively and that there has been no breach of Listing
-

Rule 15.7 by Magnis (or by any of its officers or executives) in relation to the matters the subject of ASX's query. Nonetheless, Magnis states that it will:

- a. consider legal action if it concludes that any person outside of Magnis who owed an obligation of confidence to Magnis breached that obligation; and
 - b. will continue to assist ASX with its investigation into this matter.
4. Magnis confirms that the above noted responses have been authorised and approved by its board of directors

Yours Sincerely

Duncan W Glasgow
Group General Counsel & Company Secretary
Magnis Energy Technologies Ltd.
E:info@magnis.com.au



22 February 2023

Reference: 68705

Mr Duncan Glasgow
Group General Counsel & Company Secretary
Magnis Energy Technologies Ltd
Suite 1101, Level 11
1 Castelreagh Street
Sydney NSW 2000

By email only.

Dear Mr Glasgow

Magnis Energy Technologies Limited ('MNS'): Query Letter

ASX refers to the following:

- A. MNS's announcement titled 'Magnis Signs Offtake Agreement' (the '**Announcement**'), released on the ASX Market Announcements Platform ('**MAP**') at 8:50am AEDT on 21 February 2023, which disclosed the signing of an offtake agreement with Tesla Inc ('**Tesla**').
- B. MNS's request for a trading halt, which was effected at 9:11am AEDT on 20 February 2023.
- C. An article published at 4:30pm AEDT on 20 February 2023 in the *Australian Financial Review* titled 'Magnis Energy to join Tesla crew with binding offtake deal'¹ (the '**Article**'), which contained information referred to in the proposed announcement which had not yet been released on MAP.
- D. Listing Rule 15.7, which states that:
"An entity must not release information that is for release to the market to any person until it has given the information to ASX and has received an acknowledgement that ASX has released the information to market."
- E. Listing Rule 3.1, which requires a listed entity to immediately give ASX any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities.
- F. Listing Rule 3.1A, which sets out exceptions from the requirement to make immediate disclosure, provided that each of the following are satisfied.
"3.1A Listing rule 3.1 does not apply to particular information while each of the following is satisfied in relation to the information:
3.1A.1 One or more of the following applies:
 - *It would be a breach of a law to disclose the information;*
 - *The information concerns an incomplete proposal or negotiation;*
 - *The information comprises matters of supposition or is insufficiently definite to warrant disclosure;*

¹ <https://www.afr.com/street-talk/magnis-energy-to-join-tesla-crew-with-binding-offtake-deal-20230220-p5clwh>

-
- The information is generated for the internal management purposes of the entity; or
 - The information is a trade secret; and
- 3.1A.2 The information is confidential and ASX has not formed the view that the information has ceased to be confidential; and
- 3.1A.3 A reasonable person would not expect the information to be disclosed.”
- G. ASX’s policy position on the concept of “confidentiality”, which is detailed in section 5.8 of Guidance Note 8 *Continuous Disclosure*: Listing Rules 3.1 – 3.1B. In particular, the Guidance Note states that:
- “Whether information has the quality of being confidential is a question of fact, not one of the intention or desire of the listed entity. Accordingly, even though an entity may consider information to be confidential and its disclosure to be a breach of confidence, if it is in fact disclosed by those who know it, then it ceases to be confidential information for the purposes of this rule.”*

Request for information

Having regard to the above, ASX asks MNS to respond separately to each of the following questions and requests for information:

1. Please explain how the information in the Announcement appeared in the Article.
2. What arrangements does MNS have in place to ensure compliance with Listing Rule 15.7?
3. If the current arrangements are inadequate or not being enforced, what additional steps does MNS intend to take to ensure compliance with Listing Rule 15.7?
4. Please confirm that MNS’s responses to the questions above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of MNS with delegated authority from the board to respond to ASX on disclosure matters.

When and where to send your response

This request is made under Listing Rule 18.7. Your response is required as soon as reasonably possible and, in any event, by no later than **9.30 AM AEDT Friday, 24 February 2023**. You should note that if the information requested by this letter is information required to be given to ASX under Listing Rule 3.1 and it does not fall within the exceptions mentioned in Listing Rule 3.1A, MNS’s obligation is to disclose the information ‘immediately’. This may require the information to be disclosed before the deadline set out in the previous paragraph and may require MNS to request a trading halt immediately.

Your response should be sent to me by e-mail at **ListingsComplianceSydney@asx.com.au**. It should not be sent directly to the ASX Market Announcements Office. This is to allow me to review your response to confirm that it is in a form appropriate for release to the market, before it is published on the ASX Market Announcements Platform.

Trading halt

If you are unable to respond to this letter by the time specified above, you should discuss with us whether it is appropriate to request a trading halt in MNS’s securities under Listing Rule 17.1. If you wish a trading halt, you must tell us:

- the reasons for the trading halt;
- how long you want the trading halt to last;
- the event you expect to happen that will end the trading halt;

-
- that you are not aware of any reason why the trading halt should not be granted; and
 - any other information necessary to inform the market about the trading halt, or that we ask for.

We require the request for a trading halt to be in writing. The trading halt cannot extend past the commencement of normal trading on the second day after the day on which it is granted. You can find further information about trading halts in Guidance Note 16 *Trading Halts & Voluntary Suspensions*.

Suspension

If you are unable to respond to this letter by the time specified above, ASX will likely suspend trading in MNS's securities under Listing Rule 17.3.

Listing Rules 3.1 and 3.1A

In responding to this letter, you should have regard to MNS's obligations under Listing Rules 3.1 and 3.1A and also to Guidance Note 8 *Continuous Disclosure*: Listing Rules 3.1 – 3.1B. It should be noted that MNS's obligation to disclose information under Listing Rule 3.1 is not confined to, nor is it necessarily satisfied by, answering the questions set out in this letter.

Release of correspondence between ASX and entity

We reserve the right to release a copy of this letter, your reply and any other related correspondence between us to the market under listing rule 18.7A.

Questions

If you have any questions in relation to the above, please do not hesitate to contact me.

Yours sincerely

Angel He
Adviser, Listings Compliance